***

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 395 of 2006

Date of decision: 13.2.2007

Sh.Zora Singh **...Appellant**

Versus

Commissioner of Income-Tax, Karnal **...Respondent**

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Pankaj Jain, Advocate for the appellant.
Mr.Yogesh Putney, Advocate for the respondent.

****

RAJESH BINDAL, J.

The appellant has approached this Court by filing the present appeal under Section 260-A of Income Tax Act, 1961 (for short 'the Act') against order dated 19.12.2005 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (for short 'the Tribunal') in ITA No. 872/Chandi/2004 in respect of the assessment years 2001-02 raising the following substantial questions of law:-

"i. Whether under the facts and circumstances of the case the Tribunal's finding are perverse in estimating the net profit at 42225/- @ 8% of gross receipts and application of provisions of Section 145 and rejecting book results?

ii.a Whether under the facts and circumstances of the case the Tribunal is justified in upholding the accrual and arising of income in the opening of relevant financial year amounting to Rs. 40,000/- against total investment of Rs. 1,20,000/-?"

Briefly the facts, evident from the orders on record , are that the

***

assessee being a labour contractor, filed his return of income for the assessment year in question declaring the same at Rs. 80,210/- on 3.10.2001. The same was processed under Section 143 (1) of the Act. However, the case of the assessee was picked up for scrutiny and a notice was accordingly issued. During the course of assessment, the assessee having not been able to satisfy the Assessing Officer, with regard to initial investment of Rs. 1,20,000/- made by him, the claim to the extent of Rs. 80,000/- was disallowed and added to his income treating the same from undisclosed sources. Further, the assessee having a total receipt of Rs. 52,79,416/- had shown the net profit @ 1.52% of the gross receipts. Having failed to produce the books of accounts and vouchers to justify the expenses made against the gross receipts net profit rate was estimated at 8% by the Assessing Officer vide order dated January 15, 2004.

In appeal before the Commissioner of Income-Tax (Appeals), the application of net profit rate at the rate of 8% was upheld whereas in spite of there being no satisfactory explanation, additional relief to the extent of Rs. 40,000/- was granted on account of initial capital invested by the assessee. Still further in appeal before the Tribunal, the assessee failed on account of addition of Rs. 40,000/- as initial investment, however, while estimating the gross profit rate, a relief of Rs. 80,210/- was granted to the assessee thereby reducing the net profit rate from 8% to 6.5%.

We have heard learned counsel for the parties and with their assistance have perused the impugned order.

We do not find any justification to interfere in the order passed by the Tribunal which is in the realm of estimation. The assessee having failed to produce the books of accounts, an estimation of net profit rate was made by the Assessing Officer at the rate of 8%, which was reduced to 6.5% by the Tribunal. We do not find any material on record to hold that estimation of net profit rate by the authorities below should be less than what has been estimated by the Tribunal. In the jurisdiction vested in this Court under Section 260A of the Act, this Court will not substitute its own opinion on estimation made by the authorities below when the view taken

***

by the authorities is a possible view in the facts and circumstances of the case. Similar is the position with regard to addition on account of income from undisclosed sources where addition of Rs. 40,000/- has been upheld.

The appeal is accordingly dismissed.

(Rajesh Bindal)
Judge

February 13,2007 **(M.M.Kumar)**
Pka **Judge**